

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

AVANOS MEDICAL SALES, LLC,)	
)	
Plaintiff,)	
)	Case No. 2:19-cv-02754
v.)	
)	
MEDTRONIC SOFAMOR DANEK USA,)	
INC., MEDTRONIC USA, INC. and)	
MEDTRONIC, INC.,)	
Defendant.		

**ORDER DIRECTING PLAINTIFF TO FILE RESPONSE AND ITS PROPOSED
SCHEDULE FOR CLAIM CONSTRUCTION**

Before the Court is Defendants Medtronic Sofamor Danek USA, Inc., Medtronic USA, Inc., and Medtronic, Inc.’s (“Medtronic”) Motion for Claim Construction (ECF No. 245) and Motion for Expedited Consideration and Briefing on Opposed, Expedited Motion for Claim Construction (ECF No. 246), both filed on September 3, 2021. “When the parties present a fundamental dispute regarding the scope of a claim term, it is the court’s duty to resolve it.” O2 Micro Int’l Ltd. v. Beyond Innovation Tech. Co., 521 F.3d 1351, 1362 (Fed. Cir. 2008). Claim construction can occur “during various phases of litigation, not just in a Markman order.” Conoco, Inc. v. Energy & Env’tl. Int’l, LC, 460 F.3d 1349, 1359 (Fed. Cir. 2006). In the interest of maintaining the current trial schedule, the Court ORDERS Plaintiff Avanos to file a Response as well as its own proposed schedule for completion of claim construction by Monday, September 13 at noon. Medtronic may then file a Reply to this Response by no later than 5 p.m. on Thursday, September 16. The Court will then promptly issue a schedule for claim

construction if, after reviewing the submitted materials, the Court determines claim construction is required for the claim term “protrusion extending from said distal end of said energy delivery device.”

SO ORDERED, this 7th day of September, 2021.

/s/ Jon P. McCalla
JON P. McCALLA
UNITED STATES DISTRICT JUDGE